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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/709,417	05/04/2004	Darrell Keith Downey	DD01	3416
27797	7590	11/22/2005	EXAMINER	
RICHARD D. FUERLE 1711 W. RIVER RD. GRAND ISLAND, NY 14072			VALENTI, ANDREA M	
			ART UNIT	PAPER NUMBER
			3643	

DATE MAILED: 11/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/709,417

Applicant(s)

DOWNEY, DARRELL KEITH

Examiner

Andrea M. Valenti

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 May 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 17 and 18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 17 recites the limitation "said seals" in line 1 and 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 1 mentions a watertight seal, but then seal is introduced again in claims 4 and 5 as seals for the openings. It is not clear which seal applicant is referring to in claims 17 and 18. For examination purposes the examiner has assumed the seal in claim 17 was the seal for the openings and in claim 18 it is assumed the seal is referring to the watertight seal. Clarification is requested.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 6-11, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,108,970 to Ball

Regarding Claim 1, Ball teaches a devise for watering vegetation comprising (A) a cylindrical tube (ball #11 and col. 3 line 59-60) that can be ("can be" merely means the device should be capable of performing this function, but because of the functional language applicant has not positively claimed this limitation) laid flat and rolled up, said tube having a watertight seal (Ball Fig. 5 where #26 and #11 meet) from each end, thereby providing a flap (Ball Fig. 5 #26) at each end; (B) means for attaching said flaps to stakes (Ball Fig. 5 #23) that can be driven into the ground, (C) one or two openings (Ball #12) along the length of said tube through which water can be admitted into said tube; and (D) at least one drip emitter (Ball #14) in said tube, opposing said openings, from which water can exit said tube.

Ball teaches a watertight seal near each end, but is silent on explicitly teaching the tube having a watertight seal about 2 to about 6 inches from each end. However, it would have been obvious to one of ordinary skill in the art to modify the teachings of Ball at the time of the invention since the modification is merely a change in size (i.e. change in size of Fig. 5 element #26) to accommodate different size stakes depending on the soil conditions in the area the device is being used, environmental conditions such as wind conditions, and the material that the stake is made out of (e.g. metal stakes maybe smaller in size then wooden stakes).

Regarding Claim 2, Ball as modified teaches the tube is made of plastic (Ball Col. 2 line 55).

Regarding Claim 3, Ball as modified teaches the tube is made of low density polyethylene (Ball Col. 2 line 60).

Regarding Claim 6, Ball as modified teaches the opening is unsealed (Ball #12 and Col. 4 line 10-11).

Regarding Claim 7, Ball as modified teaches the flaps have slits though which said stakes can be (current claim language means that the stakes do not have to be in the slots, but merely capable of being received in slots) inserted (Ball Fig. 5 #23 is receiving in a slot in #26).

Regarding Claim 8, Ball as modified teaches the emitters comprise coiled tubing (ball #14).

Regarding Claim 9, Ball as modified teaches the emitters comprise puncture holes (Ball the tubes are inserted into puncture holes in element #11 and Col. 3 line 26-27).

Regarding Claims 10 and 11, Ball as modified is silent on the dimension of the tube is about 6 to about 14 inches in diameter and the tube is about 2 to about 36 feet long. However, it would have been obvious to one of ordinary skill in the art to further modify the teachings of Ball at the time of the invention since the modification is merely a change in size to accommodate different plant varieties and coverage area and does not present a patentably distinct limitation [*In re Rose*, 220 F.2d 459, 463, 105 USPQ 237, 240 (CCPA 1955)].

Regarding Claim 16, Ball as modified teaches the tube is rolled-up (Ball Fig. 1).

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,108,970 to Ball in view of U.S. Patent Pub. No. US 2003/0203799A1 to VandenHeuvel.

Regarding Claim 4, Ball as modified is silent on said opening is sealed by means of zipper lock. However, VandenHeuvel teaches a container closure means utilizing a zipper lock (VandenHeuvel paragraph [0004]). It would have been obvious to one of ordinary skill in the art to further modify the teachings of Ball with the teachings of VandenHeuvel at the time of the invention to prevent the user from tearing the opening to large and to prevent contamination from entering the container (e.g. leaves and insects).

Claims 5, 12, 17, 18, 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,108,970 to Ball in view of United Kingdom Patent GB 2113062A to Thomas Craig.

Regarding Claim 5, Ball as modified is silent on the opening is sealed by means of removable caps. However, Thomas Craig teaches a device for watering vegetation that has a removable cap sealing the opening (Thomas Craig Fig. 2 #3). It would have been obvious to one of ordinary skill in the art to further modify the teachings of Ball with the teachings of Thomas Craig at the time of the invention for the advantage of preventing premature evaporation from the opening or to prevent contamination from entering the device (e.g. leaves and insects; a zipper lock is merely a known alternate

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equivalent closure means one selected over the other based on ergonomic preferences).

Regarding Claim 12, Ball as modified is silent on said tube is colored to prevent the growth of algae. However, Thomas Craig teaches a device for watering vegetation that is colored to prevent the growth of algae (Thomas Craig page 2 line 11-13). It would have been obvious to one of ordinary skill in the art to further modify the teachings of Ball with the teachings of Thomas Craig at the time of the invention for the known advantage of controlling fungus and controlling the temperature around the plant.

Regarding Claim 17, Ball as modified by Thomas Craig teaches, but is silent on multiple openings and seal. However, it would have been obvious to one of ordinary skill in the art to further modify the teachings of Ball with the teachings of Thomas Craig at the time of the invention since the modification is merely the duplication of a known element for a multiple effect to allow for filling the container faster by utilizing more than one opening [*In re Harza*, 274 F.2d 669, 671, 124 USPQ 378, 380 (CPA 1960)]. Ball as modified teaches seals are linear (Ball multiple seals in of element #12 located in element #13), said openings are aligned and said drip emitters (Ball Fig. 2 #14 and #12) are aligned with one end of the seals and said drip emitters are aligned with the other end of the seals.

Regarding Claims 18 and 19, Ball as modified teaches multiple openings and that the openings are located near the watertight seals, but is silent on explicitly teaching each openings is within about an inch from a seal. However, it would have been obvious to one of ordinary skill in the art to further modify the teachings of Ball at

the time of the invention since applicant has not provided criticality within the specification for the this location of the opening relative to the seal and since the modification is thus merely a shift in location of a known element performing the same intended function [*In re Japikse*, 181 F.2d 1019, 1023, 86 USPQ 70, 73 (CCPA 1950)] modified for the advantage of easily locating the opening when it is time to refill the device.

Regarding Claim 20, Ball as modified teaches two slits (Ball # 26 top and bottom that allow the stake to pass through) and teaches a drip emitter (Ball #14), but is silent on multiple drip emitters. However, it would have been obvious to one of ordinary skill in the art to further modify the teachings of Ball at the time of the invention since the modification is merely the duplication of a known element for a multiple effect opening [*In re Harza*, 274 F.2d 669, 671, 124 USPQ 378, 380 (CPA 1960)] performing the same intended function modified to meet the watering needs of different plant varieties (i.e. some plants require more water then others).

Claims 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,108,970 to Ball in view U.S. Patent No. 2,753,156 to Reiger.

Regarding Claim 13, Ball as modified teaches that device can be used in a fence/linear fashion (Ball Fig. 5 and 3), but is silent on said means for attaching joins together flaps from at least two tubes. However, it is old and notoriously well known to connect panels in series (e.g. fences) and Reiger teaches a means for attaching that joins together flaps from at least two tubes (Reiger Fig. 2 #1 stakes are tied together,

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thus by joining the stakes of Ball it would also joins the flaps). It would have been obvious to one of ordinary skill in the art to further modify the teachings of Ball with the teachings of Reiger at the time of the invention for a multiple effect to cover a larger treatment area and to prevent multiple units from blowing over in the wind by securing them together.

Regarding Claim 14, Ball as modified teaches the tubes are joined in a line (Reiger Fig. 1).

Regarding Claim 15, Ball as modified teaches the tubes are joined in a circle (Ball Fig. 1).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

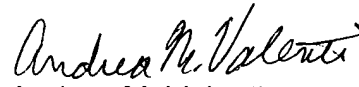
French Patent FR 2666958 A1; U.S. Patent No. 3,711,992; French Patent FR 2561063; German Patent DE 3304800A1 (Fig. 2); U.S. Patent No. D493,075; U.S. Patent No. US 6,385,900; U.S. Patent No. 5,020,271; U.S. Patent No. 4,869,018; U.S. Patent No. 6,484,439; U.S. Patent No. 5,067,272; U.S. Patent No. 6,293,477; U.S. Patent No. 4,071,974; U.S. Patent No. 5,301,633; U.S. Patent No. 5,117,582; U.S. Patent No. 5,613,320; U.S. Patent No. 2,511,486.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 571-272-6895. The examiner can normally be reached on 7:00am-5:30pm M-Th.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Andrea M. Valenti
Patent Examiner
Art Unit 3643

15 November 2005